

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS
and DETERMINATION REPORT**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Mario Gonzales
	Certification Number:	20030
	Business Name:	Sierra Huachuca Arc, Inc.
	Certification Number:	20031
	Type of Certificate/License:	PRN, BUE
<i>COMPLAINANT</i>	Name:	Belvet Elsouhag
<i>INVESTIGATION INFORMATION</i>	Complaint Number:	15-0024/15-0025
	Investigators:	Pasquale Fontana Anne Hunter

Complaint Received:	October 9, 2015
Complaint Forwarded to the Certificate Holder:	November 25, 2015
Certificate Holder/Licensee Received Complaint:	November 30, 2015
Request for 30 Day Extension to Respond:	December 21, 2015
Extension Granted:	December 23, 2015
Response From Certificate Holder:	January 11, 2016
Period of Active Certification/Licensure:	March 2, 1999 – Present (Mario Gonzales)
Status of Certification/License:	Active
Period of Active Certification/Licensure:	March 2, 1999 – Present (Sierra Huachuca Arc, Inc.)
Status of Certification/License:	Active
Availability of Certificate Holder/Licensee:	Available
Availability of Complainant:	Available
Report Date:	April 26, 2016

ALLEGATIONS:

1. Complainant alleges the Superior Court appointed the Cochise County Public Fiduciary's Office as successor conservator in a case because The United States Department of Veterans Affairs removed Mario Gonzales as the fiduciary in six separate cases due to breach of fiduciary responsibility and non-compliance with filing accountings.

ADDITIONAL ALLEGATIONS:

2. Gonzales failed to complete and file timely and/or accurate accountings.
3. Gonzales failed to properly inventory and pictorially record estate property.

4. Gonzales failed to adequately protect a protected person's assets.
5. Gonzales inappropriately "block billed."
6. Gonzales co-mingled estate assets.
7. Gonzales failed to adequately maintain client records.

<p>List of sources for obtaining information: (Investigative, records, outside resources, etc.):</p>

- Written complaint and documentation submitted by complainant, Belvet Elsouhag ("Elsouhag"), Deputy Public Fiduciary, Cochise County Public Fiduciary ("Public Fiduciary")
- Written response and documentation submitted by certificate holder, Mario Gonzales ("Gonzales") and his attorney, Nathan Williams ("Williams")
- Review of applicable Certification and Licensing Division ("Division") records
- Review of applicable sections of Arizona Revised Statutes ("ARS"), Arizona Codes of Judicial Administration ("ACJA") § 7-201 and § 7-202, and Arizona Supreme Court Rules, and §3-303.
- Review of applicable sections of U.S.C §§ 38- 5502, 5509, 6101, and Code of Federal Regulations §38- 13.104 and 13.100
- Review of applicable Superior Court of Arizona ("Superior Court") Cochise County records regarding Sarah M. Jones ("Jones"), Cause Number GC2011-00133
- Review of applicable Superior Court records, Graham County, regarding Edgar Richcreek ("Richcreek"), Cause Number GC2011-00003
- Review of applicable Superior Court records, Graham County, regarding Kathleen Tennis ("Tennis"), Cause Number PB2009-071
- Review of applicable Superior Court records, Cochise County, regarding Jesus Sosa ("Sosa"), a minor, Cause Number GC2011-00115
- Review of applicable Superior Court records, Cochise County, regarding Jorge Grijalva ("Grijalva"), a minor, Cause Number GC2011-00067
- Review of applicable Superior Court records, Cochise County, regarding Marina Miranda ("Miranda"), Cause Number GC2008-00050
- Review of applicable Superior Court records, Cochise County, regarding Naomi Zebrowski ("Zebrowski"), Cause Number GC2009-00151
- Documentation provided by Christopher Hitchcock ("Hitchcock"), court appointed Guardian Ad Litem for Jones
- Documentation submitted by Angela Wright ("Wright"), Legal Instruments Examiner, The United States Department of Veterans Affairs ("VA")
- Interview with Wright
- Interview with Candice Bowen, Field Examiner, VA
- Interview with Michelle Hughes, Field Examiner, VA
- Interview with Elsouhag
- Interview with Gonzales
- Interview with licensed fiduciary, Stephanie McCollum ("McCollum") and her assistant, Kimberly Thomas ("Thomas")

- Interview with Kathryn Richcreek Loftus (“Kathryn”), daughter of deceased ward, Richcreek
- Interview with David Loftus (“David”), husband of Kathryn Richcreek Loftus
- Interview with Jeremy Waite (“Waite”), former court appointed attorney for Richcreek
- Documentation provided by Waite

<p>PERSONS INTERVIEWED:</p>

1. Belvet Elsouhag
2. Michelle Hughes
3. Mario Gonzales
4. Candice Bowen
5. Kathryn Richcreek Loftus
6. David Loftus
7. Stephanie McCollum
8. Kimberly Thomas
9. Jeremy Waite
10. Angela Wright

<p>SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:</p>

1. Gonzales is the owner and operator of Gonzales Fiduciary Services and Sierra Huachuca Arc, Inc. (“SHARC”).

SHARC provides representative payee services for social security benefits and services as agent under Powers of Attorney.

2. On October 9, 2015, the Division reviewed a written complaint against Gonzales. The following appears verbatim in the complaint [space between paragraphs added]:

CASE NO.GC2011-00133, CHOICE COUNTY SUPERIOR COURT, DIV 1, JUDDGE CHARLES A. IRWIN. NEXT HEARING WILL BE SENT FOR THE WEEK OF DEC 7, 2015. MARIO GONZALES WAS APPOINTED AS CONSERVATOR IN 2011. VA ISSUED A NON COMPLIANCE LETTER DUE TO LACK OF ACCTGS. FIRST HEARING WAS IN MAR 2015. COURT REQUESTED PUB FID OFFICE TO REVIEW CASE. THE PUB FID FILED EMERGENCY TEMP SUCCESSOR C PETITION AND WAS APPOINTED ON 8/26/15.

1/14/15 – VA LETTER NOTIFYING COURT OF NON-COMPLAINE BY FIDUCIARY DUE TO LACK OF ACCOUNTING. VA SUSPENDED FIDUCIARY IN FIVE SIMILAR CASES. LETTER ATTACHED.

3/10/15 – MARIO GONZALES NARRATIVE ADDRESSING SOME OF THE COURT'S QUESTIONS.

3/25/15 – HEARING TO ADDRESS ISSUES RAISED BY VA LETTER. COURT EXPRESSES CONCERN REGARDING FIDUCIARY'S CONTINUING TO SERVE AS CONSERVATOR. APPOINTES GUARDIAN AD LITEM, CHRIS HITCHCOCK 520-532-2279. REQUESTS PUB FID TO REVIEW CASE.

8/12/15 – MARIO GONAZLES FILES INITIAL INVENTORY DATED 6/7/14. INVENTORY SHOWS A LIST OF PROEPTY WITHOUT ANY VALUATION. REAL ESTATE AND VEHICLE ARE MISSING FROM LIST.

8/20/15 - PUBLIC FIDUCIARY OFFICE REPORT INCLUDES REFERENCE OF CONTACT WITH MOTHER OF PROTECTED PERSON. REVIEW OF ACCOUNTING/RECORDS FILED BY MARIO GONZALES AT THE TIME AND LIST OF RECORDS MISSING.

8/25/15 - PUBLIC FIDUCIARY FILED EMERGENCY TEMP SUCCESSOR C PETITION. AFFIDAVIT OF EMERGENCY ATTACHED. COPY OF APPOINTMENT LETTERS. COPY OF TRANSACTIONS LOGS RCVD.

10/05/15 – COURT APPOINTED THE PUBLIC FIDUCIARY AS PERMANENT CONSERVATOR. COUR TORDERED GONZALES TO LIST PF AS INTERESTED PARTY AND FILE MISSING RECORS. HEARING WILL BE SET IN WEEK OF DEC 7 TO REVIEW ACCOUNTINGS.

3. The Division reviewed a letter from the VA, dated January 21, 2015, sent to the Clerk of the Superior Court, Cochise Country regarding the Jones matter. In summary, the VA alerted the Superior Court to non-compliance by conservator, Gonzalez; stated that he was delinquent in submitting an accounting for the period 06/14/2013 to 06/14/2014; and said he failed to comply with the VA's other requests to furnish additional information such as court documents and proof of bond. The letter identified the following information as still outstanding from Gonzales:

- 1) Accounting for the period of 06/14/2013 to 06/13/2014;
- 2) Proof of Bond;
- 3) Beginning Inventory;
- 4) Conservator's 1st Court Account for the period of 06/14/2011 to 06/13/2012;
- 5) Conservator's 2nd Court Account for the period of 6/14/2012 to 06/13/2013;
- 6) Conservator's 3rd Court Account for the period of 6/ 14/2013 to 06/13/2014; and
- 7) Physician's Statement

The VA further informed the court that the VA had removed Gonzales in five other and separate cases, replaced due to similar issues with his ability to account with his other beneficiaries; and that Gonzales was delinquent in about ten other cases in which he serves as a federal and/or court appointed fiduciary. The letter cited Federal Law that non-compliance in submitting required accountings "...shall be taken to be sufficient evidence prima facie of such embezzlement or misappropriation" and such cases may ultimately be referred to the U. S Attorney. 38 C.F.R. 13.100(c), (d). Failure of informal efforts to correct the situation may result in one or more of the following actions:

- Referral for misuse investigation
 - Referral to VA Regional Counsel
 - Referral to U.S. Attorney
 - Suspension of beneficiary's benefits
 - Initiate removal of fiduciary
4. The Division reviewed similar letters from the Department of Veterans Affairs to the Superior Courts in Cochise and Graham Counties:
- Cochise County Superior Court, dated July 6, 2015, regarding veteran Joseph Jasiewicz, Cause Number GC2013-00170
 - Graham County Superior Court regarding veteran, Richcreek, dated January 14, 2015.

The VA also sent a letter to the Graham County Superior Court, dated August 15, 2014, regarding veteran, Tennis, alerting the court that the VA determined it was "...necessary to change the fiduciary relationship, for the VA funds, from Mr. Mario Gonzales to another private fiduciary..."

5. The Division reviewed written correspondence, including a Conservator's Report, submitted by Gonzales to the Superior Court, filed on March 10, 2015, regarding Jones. Gonzales stated, in part, that during the years 2011-2015, he experienced significant health issues, family health issues, and a large increase in the number of clients either coming on or passing away. He said the Jones case took a lot of time to manage and that while there was no excuse for not filing the report, time became a major factor and reports for Jones were not filed. He claimed that he was now up to date.

Gonzales provided a historical narrative involving Jones and included a statement that during the period 2011-2012, Jones had memorized or written down the checking routing and account numbers and was accessing money without his permission. Despite closing her account and opening a new one, Jones continued to purchase items through the internet and she opened new accounts. For the year 2012-2013, Gonzales said Jones was seeking out and granted credit despite a warning he placed in her credit bureau reports warning creditors that she was a ward and that no one should extend credit without his permission. Gonzales, despite this,

she purchased a new car without his permission and her parents sent him \$26,000.00 to pay the car loan. He said even though he discharged the car loan Jones increased her debt by \$9,000.00. Gonzales wrote that in 2013-2014, “the onslaught of debt continued” and in 2015 Jones went to Costa Rica for plastic surgery.

In the correspondence to the court Gonzales included his management plan for 2015 onward and his stated intention to set up a debt reduction schedule with creditors, send another statement to the credit bureau, and attempt to reduce Jones’ debt. He said despite ongoing discussions with Jones and her lack of compliance he believed he could continue to work with her but that bankruptcy was “a very real possibility.”

6. On October 15, 2015, Division Investigator, Pasquale Fontana (“Investigator Fontana”), conducted a telephonic interview with Elsouhag. She said the Superior Court asked the Public Fiduciary’s office to take responsibility for the Jones case after the VA issued a letter of non-compliance to Gonzalez and sent a letter to the court. She said Gonzalez was court appointed conservator for Jones in 2011 but Gonzales failed to file accountings for the period 2011 through 2015, and he either failed to provide inventories or had inventories that did not contain valuations. Apparently, Gonzales allowed a handyman he hired to complete an inventory. Elsouhag said the court discharged Gonzales of his responsibility as conservator and ordered that a complete accounting be produced. Gonzales submitted some of the accounting and Elsouhag saw all of the new accounting from 2013 forward but said transaction logs from 2011 – 2013 have not been submitted. She said court appointed guardian ad litem, Hitchcock, has been receiving, in installments, some of the accounting from Gonzales and his attorney, Williams. A hearing on the matter was set for December 7, 2015.

According to Elsouhag, VA Field Examiner, Hughes, worked with and has known Gonzales for about 10 years and had been telling him to file the accountings but Gonzales failed to comply resulting in the VA removing him as fiduciary. Elsouhag said Hughes was not concerned about any missing estate money but said Gonzales’ record keeping had always been a challenge. Elsouhag said she was aware of health issues in the Gonzales family that may have contributed to the problems. She added that Gonzales is the only private fiduciary in the Sierra Vista geographical area.

In 2013, on another case, unrelated to Jones, Elsouhag said Gonzales failed to submit health insurance information to a client’s doctor when Gonzales changed insurance providers and his lack of doing so resulted in denial of medical claims for the client. The court asked the Public Fiduciary’s office to review the matter and make recommendations. After Elsouhag looked into the case she recommended to the court that Gonzales reimburse the estate for the \$900.00 in denied claims but she had no further involvement and did not know the outcome.

7. On November 30, 2015, Investigator Fontana conducted a telephonic interview with VA Field Examiner, Hughes. She said she has worked with Gonzales for the

past 12 years. The VA appointed him as a legal custodian responsible for managing the VA funds for numerous veterans. Hughes asserted that Gonzales' fiduciary accountings were "poor to say the least." She said Gonzales' wife handled the accountings and he made case decisions and managed the finances. Hughes said Gonzales' wife had significant health problems forcing him to do the accountings and those accountings were late or were rejected "right and left" because they were done "rather poorly" so VA auditors considered Gonzales to be a "terrible record keeper." Because the accountings Gonzales filed were frequently denied by the VA they started "piling up and before long he was out of control with his accountings and he could not catch up." Hughes said the VA requires annual accountings from fiduciaries/legal custodians if the fiduciary takes payment for services rendered and/or if the veteran's estate is or exceeds \$10,000.00 in value.

Hughes said the VA issued a number of reminder letters to Gonzales regarding the delinquent accountings so he was well aware of the issues and he was given many chances to rectify the problems but he was completely unresponsive to the VA's requests to amend accountings. Asked if Gonzales ever reached out to her or the VA regarding any difficulties he was experiencing with the accountings to which Hughes replied that he did not but out of professional courtesy she visited him twice monthly at his Sierra Vista office and she tried to get him to understand what was required of him. Hughes said Gonzales had a "long history of me explaining those accountings to him" adding that she had cautioned him approximately 30 times, alerted him to the problems, and relayed to him that he had an opportunity to redeem himself and that if he did not get current with accountings the VA would remove him as fiduciary. Hughes acknowledged that "it was bad" so she went in and told him to "start over" and she trained him on how to do the accountings properly. She gave Gonzales a "simple, straight up example" of an accounting but she did not see any improvement and opined that he seemed "fed up" with the VA and likely stopped listening.

Hughes reiterated that Gonzales' problems co-related to his wife's declining health. He hired an assistant and got a new computer software program about two years ago but improvements were somewhat "marginal" despite the assistant doing a good job. By that time the VA made the decision to remove Gonzales because he was "really floundering" and had been having problems for three or four years. Hughes was also aware that Gonzales was frequently behind on various court accountings. She stated that although Gonzales' accountings were inadequate the VA did not find there was any misuse of funds. She said veterans liked him and it was "very rare" that any veteran complained. Hughes said Gonzales was one of the fiduciaries who were very attentive to his customers and that he went "the extra mile" citing an example whereby he drove a client to and from her daughter's home on a Sunday because she wanted to be with family over Thanksgiving.

8. On February 3 and 4, 2016, Investigators Fontana and Anne Hunter ("Hunter") conducted an onsite visit and interview with Gonzales at his office in Sierra Vista, AZ. Division staff also reviewed various files. Regarding the Jones matter,

Gonzales opined that the court did not give him the opportunity to present his views at the hearing. He acknowledged that he was represented by his attorney, Williams, throughout the proceedings. Gonzales said the court removed him as Jones' fiduciary in August 2015 because of breach of fiduciary duty and although Gonzales said he disagreed with the court he did not contest the ruling because of financial reasons and cost of legal fees. Asked to explain the reasons for his removal, Gonzales said the VA sent a letter to the court accusing him of being negligent with filing annual reports. He claimed that he filed the reports but the presiding judge was "angry" about being "tasked with the case" and decided that the Public Fiduciary's office should handle the matter. Gonzales commented that no one from the Public Fiduciary office attended the next scheduled meeting which further aggravated the judge. Gonzales asserted that when the Public Fiduciary's office accepted the Jones case the office was required to file a complaint against his licensure.

Gonzales said after the Public Fiduciary's office was appointed, over the ensuing months he responded to requests from that office and in December 2015, he and Williams met with the Public Fiduciary's staff and with guardian ad litem, Hitchcock. Gonzales said he later learned that the Public Fiduciary's office objected to his annual reports and at a January 2016, hearing, the judge listened "predominantly" to the Public Fiduciary's lawyer and decided that the Jones case should be turned over to them even though they had it since August 2015. The court ordered Gonzales to reimburse the Jones estate for fees he had taken over four years of managing the case. Gonzales remarked that the judge, stated in open court, that he did not find any malfeasance and left it up to Gonzales and the Public Fiduciary's office to work together to work out the details of repayment of monies to the estate.

Asked about the circumstances that caused the VA sufficient concern to prompt a letter to the court, Gonzales replied that when he initially took on the Jones case the VA, for a year, did not consider her in need of a fiduciary despite Jones' request for a VA conservator. He asserted the VA was "...sitting on their hands...nothing was being done" so a year later, in 2011, Gonzales became the court appointed conservator for Jones. One year after the conservator appointment the VA made Gonzales fiduciary and legal custodian of Jones' VA funds. He said "unfortunately for myself...because of my foolishness, I didn't file reports in time and that was the sole reason for removing me...in August." Gonzales acknowledged that he did not file annual accountings to the VA and said he also failed to file an inventory of the estate and annual conservator accountings with the court. He verified that the VA sent him notices that the annual reports were delinquent and requested that he submit the reports by a specific date. Asked if he was responsive to the VA's requests Gonzales said he was not but then said he was "as much as I could" elaborating that he made efforts to correct rejected reports but he was unable to do so to the VA's satisfaction adding "...if I made the attempt to get the report in, then it was kicked always kicked back for one technicality or another." He was unable to file a second annual account unless the first one was approved. Gonzales opined that he may have been removed as legal custodian because he had previously

advocated for a veteran and had filed a complaint to the VA Fiduciary Hub. He said “soon after that all the clients started disappearing.” He remarked that the VA only wants fiduciaries to manage funds and it does not care about the person.

Regarding his awareness of mandated timelines to file accountings Gonzales said “...I mismanaged that part of the case and I knew that they had to be done, it was a matter of I didn’t do it...” and “...I’m embarrassed because I didn’t do it...other things got in the way, my wife’s health went down, my health went down until it got to the bare facts that I just didn’t do the reports, or if I did the reports to the VA they were always sent back for corrections.” Gonzalez said he had 10 to 12 VA cases and he was responding to those but the Jones case “just slipped by, there’s no excuse for that.” Asked if he contacted the VA to discuss the difficulties he was experiencing that impeded his ability to timely file accountings, Gonzales said he did not contact the VA and when the Field Examiner asked him if the reports were being completed he told the Field Examiner “yeah, it’s in the works...but it wasn’t done in a timely basis.” Asked to explain the VA’s expectations regarding contacting the VA if there were problems with compliance with established budgets, as was the case with Jones because of her spending, Gonzales said “I imagine” that he was required to contact the VA but he did not.

Gonzales remarked that Jones was difficult to manage because she would “yell and scream” if she did not receive money or get her way. Asked what tools he had as a fiduciary to safeguard her estate, given his understanding that Jones could not manage her money, He said his efforts included calling and sending letters to the creditors but that he did not realize he could freeze her accounts or even thought that creditors would listen to him. He claimed that he sent letters to credit bureaus informing them not to issue Jones any credit but said she was able to open credit lines regardless. Gonzales stated that in 2013 Jones went to a car dealership and traded her vehicle for a new one. Jones’ parents sent him a check to cover the car loan. Gonzales said it was not until after the court admonished him that he learned he could freeze her accounts.

Gonzales denied that the court issued him any notices regarding delinquent accountings although he knew those accountings were required. He acknowledged that he did not complete an initial inventory for Jones. Asked how he could determine the estate’s assets without completing an inventory of the assets Gonzales said he knew Jones had a house and a car and from descriptions he got from her parents as well as from a man he hired to clean her house. Apparently Jones had many unopened boxes of things. He said he did not think she had anything of great value because he did not see her wearing jewelry or extravagant clothing. Gonzales stated that he did not do an initial inventory because Jones was a very private person and she did not want anyone in her house counting her personal property. Rather than forcing the issue Gonzales said he waited until Jones left for Montana in 2013 and he went into her residence for the first time during the summer of 2014 at which time he completed the initial inventory.

Gonzales remarked that he had no excuse for not filing the annual accountings other than that he was “very busy at the time” and that he and his wife experienced health issues. Asked about his wife’s role in completing the accountings, Gonzales said she was an administrative assistant but worked strictly on the SHARC side of the business doing the payee work but she did not assist him with the accountings on the conservator or legal custodian side. His wife’s health declined in 2013 and 2014 but said he continued to work throughout her hospitalization and recovery, starting work earlier in the day, staying later into the evenings and coming to the office on Sundays. Regarding his own health issues, Gonzales described having several bicycle related accidents including one in 1999, another in 2011, and again in 2014, each incident apparently resulting in various broken bones and the last one in a concussion. He said the last accident put him in hospital for a few days and he faced a week of recovery but was otherwise back to work as a fiduciary.

Gonzales said he filed, with the court, the outstanding conservator accountings and initial inventory for Jones in 2014, three years after his appointment as conservator although he knew they were required. He filed them in 2014 because he “got tired of sitting on them...I had to get them done.” The accountings have not been approved by the court. Gonzales added that he and his staff decided to “go back to square one” for the 2011 through 2012 reports and are working to complete each annual report. As of yesterday he said “we may have stumbled upon the reason the damn reports wouldn’t balance.” He said when he originally took the Jones case, as agent under a Power of Attorney in 2011, he opened a checking account and was paying her bills from that account but he found it difficult to balance it because Jones had apparently copied the routing and accounting numbers from the checks he issued her and she made purchases over the internet without telling him. Asked when he first realized the accounts were not balancing he said it was about two months into the process.

Gonzales said he closed Jones’ checking account and routed the money through “my personal fiduciary account,” identified as Mario Gonzales Fiduciary, business account. He put Jones’ monthly benefits into his business account and for two months he would “go cash the check and give her the cash.” Asked if he was accounting for this Gonzales said “not the way I’m doing it now...I was told in court that it was the wrong way to do it.” He gave her cash and paid her bills from his account and “when I finally got a handle on it after two months I opened a new account” but said he did not give Jones the new account or routing numbers. Gonzales said he forgot that he put Jones’ money into his business account and when they went back into the second annual accounting yesterday they became aware that \$9,000.00 was unaccounted. They went into the computer and discovered where the money went and said the money was not actually missing but there was a gap. Gonzales said they now have to go back and itemize all of the expenses and would likely have to order the recovered checks from the bank.

Asked if he was delinquent in filing any accountings including VA and court appointed cases for any client other than Jones, Gonzales initially said he was not

then conceded that he was “always delinquent with the VA clients” but said he would get the accountings done but they were not approved. He had no explanation as to why they were late other than that he would file the accountings but those were “kicked back” by the VA and when he tried correcting the accountings he was delayed in completing the other accountings and it became “too much work for one guy.” Gonzalez was clear that he “always” timely filed accountings with the court. He denied having any problems with unaccounted money in any other court appointed cases and said the court accountings were “always approved.” Gonzales denied that the court had ever previously removed him as a fiduciary or ordered him to reimburse an estate.

Regarding inventories and pictorial records, Gonzales acknowledged that he does not take pictorial records and said he was unaware that he was required to do so.

9. On February 11, 2016, Investigator Fontana conducted a telephonic interview with VA Field Examiner, Bowen. She said on December 26, 2015, the VA assigned her to review eight cases and gather facts to determine whether there was any misuse of funds. The VA sent a letter to Gonzales giving him five weeks’ notice that she was coming to complete an onsite file review and that he was required to have the identified files ready for her perusal. Bowen arrived to find that Gonzales did not have files ready. She said his assistant seemed confused and they were unable to find court accountings or bank statements. Bowen was “appalled” at the level of disorganization and had “serious concerns” about the years of “serious delinquent accountings.”

Regarding veteran, Tennis, Bowen said Gonzales moved her from an assisted living facility and she lives independently in a filthy apartment and her dog uses the carpet for a bathroom. Gonzales gives her \$600.00 spending money every two weeks but Tennis said she spends \$120.00 on groceries and puts the balance of the money into tin cans. Tennis has home services coming to clean the apartment and to assist her. Bowen said Gonzales may be getting \$760.00 rental income from Tennis’ daughter, who lives in Tennis’ house but Bowen was unsure if Gonzales was accounting for the rent money. The VA asked Gonzales for the court approved conservator accounting but he has not provided any. He also told Bowen that the court allows him to file the VA accounting in lieu of conservatorship accountings. Bowen said the VA removed Gonzales as the legal custodian for Tennis and replaced him with fiduciary, McCollum.

Regarding veteran Jones, Bowen said Gonzales did not protect her money and he gave her money despite her spending problems. She left Arizona for Montana and lived there for one year and a half and during that time Gonzales did not check on the house. There was roof damage and a leak, utility door was off the hinge, guest bathroom toilet was continuously running, lights did not work, thick dust was found throughout the residence and the floor had calcium deposits. Prior to Jones leaving Arizona she had problems with her air conditioning and Gonzales hired a company to repair the unit. He gave them a key to the house but after repairs were completed

he failed to reclaim the house key and the company had it the entire time. Bowen said Gonzales simply paid Jones' bills and did not question any of them.

Regarding veteran, Richcreek, Bowen said Gonzales was removed as the legal custodian in August 2014 and replaced by McCollum. Gonzales was to account for the VA money separately from other income sources for which Gonzales was court appointed conservator but he did not maintain separate accountings. He told Bowen that he filed only the VA accountings with the court and not conservator accountings. Bowen said Gonzales did not seem to know what money came from the VA and what money was derived from other sources. Richcreek died on April 11, 2015, and Gonzales was ordered by the VA to give the VA money back to the VA or to Richcreek's heirs but Gonzales failed to do so.

Bowen said the VA reported that as of February 2014, Richcreek's estate had \$91,000.00 in assets. The VA contacted McCollum on December 3, 2014, and learned that Gonzales had not transferred the VA funds to her. Bowen said accountings from Gonzales, dated March 31, 2014, showed that the estate had \$86,166.70 but he had not filed a final accounting with the VA, as required. Apparently on Gonzales' August 28, 2014 through June 10, 2015, accounting, he showed income of \$50,698.96 but the spending for the year was exactly the same amount, something Bowen considered unusual. Bowen reviewed bank statements showing that there was approximately \$55,000.00 in a bank account but, to date, Gonzales has not distributed the money to the estate heirs and he gave varying stories for why he had no. He initially said that a will was prepared and he tried opening a probate in Graham County but the court would not allow it because he did not have a certified copy of the will. He then told Bowen that he may have given the original will to Richcreek's daughter, Kathryn, but he did not retain a copy. Bowen said she spoke with Gonzales about this on January 19, 2016, and again on February 8, 2016, and, at that time, he indicated that he was considering dispersing the estate money "informally."

Overall, Bowen Gonzales produced or partially produced some of the records the VA requested. He completed some accountings but also submitted accountings that were not signed.

10. On February 18, 2016, Investigator Fontana conducted a telephonic interview with David Loftus. He said his father in law, Richcreek, died on April 11, 2015, but Gonzales has not yet settled the estate. About three weeks ago, Gonzales sent a letter informing that he was shipping the estate's furniture to them in Florida. The letter contained an inventory of what was being sent and also said that Kathryn would be receiving more money "down the road" but Gonzales did say how much or from where the money was coming. David said Kathryn has not received proceeds from the sale of her father's trailer but she got one or two death benefits or money from a savings account but he was not certain. He recalled that Gonzales

sent them annual statements but said those showed the fiduciary's spending rather than the value of the estate. David referenced a letter, from Gonzales, dated April 14, 2014, indicating that Richcreek was doing fine and that correspondence included an annual accounting although David did not have that accounting available. David said Gonzales sent them \$40,000.00 which was for Richcreek's military service or it could have been money from a life insurance policy. Kathryn also received a small check for about \$700 or \$800.00 from her father's work as a prison guard but there was no accompanying letter explaining the money. David said they were unhappy with how Gonzales handled the estate because it should have been settle by now.

11. On February 19, 2016, Investigator Fontana conducted a telephonic interview with Kathryn. She said she found out that her father died about one month after he passed adding that the estate has not been settled. She opined that Gonzales "thought it was funny" by sending them her father's "every little crumb of dust to my house" and not just the two or three pieces of furniture that she had requested. Kathryn received a letter from Gonzales, dated January 4, 2016, stating that her father's furniture and household belongings were on the way to Florida. Gonzales provided a cashier's check for \$3,721.07 to cover the estimated shipping costs and told her to pay the trucking company upon delivery. The letter also stated, "We'll be sending you some money soon" but did not identify how much money or when she would receive any.

For the last five years, since the VA appointed Gonzales to manager her father's money, Kathryn said she has been trying to find out "where my dad's money was going" but Gonzales would not send anything nor would he return her calls, although she also said she did speak with him occasionally. She knew that her father had Vanguard stocks and received income from his previous work as a teacher and prison guard. Several months before Richcreek died, Gonzales sold the trailer Richcreek owned but Kathryn said it was "known" that her father wanted to keep the trailer for her and her son so that they had a place to stay when they travelled to Arizona. The person that purchased the trailer has known her father for 30 years and he is making payments on it through Chase Bank.

Kathryn said they received money from the estate about two months ago. The Division notes that she did not appear to be a good historian and the information she provided was somewhat unclear. Initially she said she received \$20,000.00 over two checks; the first, payable to her in the amount of \$10,000.00, and the second payable to her son in the same amount. She also stated that she got one check for \$20,000.00 and she proceeded to give her son \$10,000.00, per the provisions of the will. Kathryn then thought they then each received \$10,000.00. She said the VA sent her \$42,000.00, which represented six months of "back pay" that the VA "withheld" from the estate. She added that no one informed her that Gonzales had been "under investigation" and removed by the VA. When she received the funds from the VA she knew it could not have been all of her father's estate money so she contacted the VA and was told that the \$42,000.00 represented only the VA funds and did not include any stocks and bonds or pensions etc. Kathryn said there

is a life insurance policy, payable upon death, but she has yet to receive any benefits from the insurance company.

12. On February 19, 2016, Investigator Fontana conducted a telephonic interview with McCollum and her assistant, Thomas. McCollum said the VA made her successor legal custodian for Richcreek as well as for a number of other cases previously managed by Gonzales. Asked if Gonzales transferred Richcreek's VA funds to her, McCollum said was not at her office at the time of this Investigator's call so she was unable to review her files but thought Gonzales did transfer the funds to her. She recalled that after Richcreek died Gonzales contacted her about wanting the estate funds transferred back to him because he claimed he was the estate's personal representative. McCollum asked him to provide documentation verifying his appointment before she would release funds but Gonzales did not.

Regarding Tennis, McCollum said the VA Field Examiner called to inquire if she was receiving rent money because apparently Gonzales told the VA he was not. McCollum said after she was appointed successor legal custodian by the VA, Gonzales called her to say that VA funds, historically, were used to pay for Tennis' mortgage and rental of her apartment so McCollum continued to cover those costs. Thomas said they later learned that Gonzales was to be paying the mortgage. VA Field Examiner, Hughes, told them that Tennis had a niece living in the residence with an agreement that she pay rent as she was able.

McCollum indicated that she would return to her office, review her files, and send the Division information regarding Gonzales' transfer of VA funds to her.

On February 22, 2016, McCollum sent email correspondence to the Division verifying that she did not receive any of Richcreek's VA money from Gonzales.

13. On March 1, 2016, Investigator Fontana conducted an interview with VA Legal Instruments Examiner, Wright. She said the VA directed Bowen to conduct a misuse investigation involving eight cases previously managed by Gonzales. Bowen submitted her report and the VA was in the process of determining whether any misuse occurred. Wright said the Division can obtain a copy of the reports once completed but would require a formal request for records.

Regarding veteran, Richcreek, Wright said Gonzales was very late with filing his accountings and there were problems with those accountings. It appeared that Gonzales maintained the estate in separate accounts as required by the VA. She confirmed that on or about June 19, 2015, the VA sent Kathryn a check in the amount of \$44,456.62 which represented the balance of the VA funds. Wright said according to the bank statements and records reviewed, Richcreek's estate had \$50,825.66 as of January 31, 2016.

Regarding veteran, Tennis, Wright said verified that there was an approximately \$6,000.00 discrepancy with the accountings submitted by Gonzales and the

accounting that the VA conducted. Wright was unable to say whether the financial discrepancy had been resolved and if the accounting was approved but said she would review her information accordingly.

14. On March 16 and 27, 2016, Investigators Fontana and Hunter conducted an onsite file review at Gonzales' Sierra Vista office. Discussion ensued with Gonzales regarding various cases. He acknowledged that despite knowing that co-mingling his clients' money was not permitted but that he put several of his clients' benefits and money into his fiduciary business account. He claimed all money was used for the benefit of his clients.

Regarding Tennis, Gonzales submitted the first annual conservator accounting for the period his first annual conservator accounting with the court, for the accounting period September 2009 through October 2010. The conservator accounting was submitted to the court on the VA prescribed accounting form. The court approved the accounting but was subsequently disproved by the VA because there was a discrepancy of about \$6,000.00. Despite the VA's ongoing correspondence with Gonzales and continued requests for an amendment of his accounting Gonzales did not provide any correction and the VA determined that it would approve the accounting because the court had oversight and approved it accordingly. Gonzales was asked to explain what steps he took to resolve the significant accounting discrepancy but he was unable to describe any specific steps his office took to resolve the more than \$6,000.00 inconsistency and acknowledged that the matter remains unsolved and unexplained.

During Division's staff onsite office visit on February 3 and 4, 2016, Gonzales was asked about the conservatorship involving brothers, minors Sosa and Grijalva. At that time, Gonzales stated that all money was restricted by the court and that he obtained judicial approval prior to accessing those monies but also said that at times he did not seek prior judicial approval because it was somewhat cumbersome to do so every time money was needed. During the March 16 and 17 onsite visit, Gonzales was again asked about this but he denied doing so and said every expenditure had prior judicial approval.

Gonzales acknowledged that he used block billing as his standard practice for all of his fiduciary billings.

ANALYSIS OF ALLEGATIONS:

This investigation revealed what appears to be a fundamental and overarching pattern of inappropriate and inexperienced fiduciary conduct. Gonzales, by any reasonable measure, has failed to adhere to professional standards required of qualified, licensed fiduciaries by demonstrating a pervasive pattern of improper administration of his professional responsibilities. Gonzales recurrently failed to perform necessary duties and discharge his fiduciary obligations and, seemingly, exhibited gross negligence by not utilizing the degree

of care, skill and proficiency that would be commonly used by skillful and prudent professional fiduciaries engaged in prevailing practice.

This is evidenced by the following:

- Failure to comply with Federal laws and the ACJA
- Failure to timely submit annual conservator accountings with the Superior Court
- Failure to submit accurate accountings with the Superior Court
- Lack of complete estate inventories including lack of valuation of estate assets and/or pictorial records of assets
- VA letters of fiduciary non-compliance sent to the Superior Court
- Removal as legal custodian on all VA cases
- Extensive documentation of non-compliance from the VA to Gonzales repeatedly requesting submission of past due and seriously delinquent accountings and/or for corrected accountings for those rejected by the VA due to errors made by Gonzales
- Superior Court removing Gonzales as conservator for Sarah Jones, Cause Number GC2011-00133
- Superior Court finding Gonzales breached his fiduciary duty to the protected person, did not file timely annual reports and ordered him to reimburse the Sarah Jones estate in the amount of \$11, 547.61
- Superior Court Order denying final and previous accountings and request for approval of fees on the Sarah Jones probate case.
- Failure to protect assets of protected person, Sarah Jones
- Co-Mingling estate assets
- Block billing
- Failure to adequately maintain complete client records

Allegation 1: Complainant alleges the Superior Court appointed the Cochise County Public Fiduciary's Office as successor conservator in a case because The United States Department of Veterans Affairs removed Mario Gonzales as the fiduciary in six separate cases due to breach of fiduciary responsibility and non-compliance with filing inventories and accountings.

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

Administrative Order 2012- 64, effective September 1, 2012 to present:

§7-202(J)(1)(a):

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration

38 U.S. Code § 5509(a):

(a) Required Reports and Accountings.

The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

38 Code of Federal Regulations § 13.104

Accounts of court-appointed fiduciaries

(a) Requirement to account; notices of filings and hearings. Accounts may be required from court-appointed fiduciaries as provided by State law, but in no event less frequently than once every 3 years. Arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to court-appointed fiduciary cases wherein the Department of Veterans Affairs is an interested party, will be sent to the Veterans Service Center Manager for review, distribution and such action as may be appropriate. Matters which require legal action will be referred to the Regional Counsel, and will include any matter in which the Department of Veterans Affairs has any objections to offer.

38 Code of Federal Regulations §13.100 (a)(1)Supervision of fiduciaries.

(a) Federal fiduciaries. In Federal fiduciary cases, the Veterans Service Center Manager may, when he or she deems it necessary for the protection of the beneficiary's interests:

(1) Require an accounting, formal or informal, of Department of Veterans Affairs benefits paid.

38 U.S. Code § 6101(b) Misappropriation by fiduciaries

(b) Any willful neglect or refusal to make and file proper accountings or reports concerning such money or property as required by law shall be taken to be sufficient evidence prima facie of such embezzlement or misappropriation.

The VA, as an interested party, determined that it was prudent to send letters to the Clerks of the Superior Court, in Cochise and Graham Counties, to give notice to the court of significant non-compliance by court conservator, Gonzales. Letters were sent on behalf of veterans, Sarah Jones, on January 14, 2015; Joseph Jasiewicz, on July 6, 2015; and Edgar Richcreek, on January 14, 2015. Letters detailed breaches of federal law and listed outstanding documentation from Gonzales.

The VA also sent letters to the Superior Court, Graham County, on August 15, 2014, on behalf of veteran, Kathleen Tennis; and on the same date sent a similar letter regarding veteran, Edgar Richcreek. Both letters notified the court of a change in VA fiduciary relationship from Gonzales to McCollum.

The VA, with long standing concern for Gonzales' failure to perform his fiduciary obligations, made the decision to remove him as legal custodian in every case for which Gonzales was appointed and assigned successor legal custodians accordingly.

VA records examined by the Division showed extensive written communication with Gonzales over a number of years involving many veterans. Letters included repeated requests for late and seriously late accountings, persistent requests for corrected accountings that were previously disapproved by the VA. Records identified the VA's considerable concern for Gonzales' accounting practices and lack of responsiveness to the federal government's communication. The VA repeatedly sent Gonzales written correspondence seeking his annual accountings and continually reminding him that he was "past due" or "delinquent" and escalated to "seriously past due" or "seriously delinquent."

The VA continued to seek accountings over several years because of Gonzales' lack of responsiveness to the VA's requests. Documentation showed that Gonzales was late filing initial accountings or late filing amended accountings that were disapproved by the VA because of errors in accounting periods, inaccurate ending and beginning balances, estate spending, and/or overcharging of fiduciary fees.

Although delinquent or problematic accountings were noted in 14 cases, the following are examples:

Donald Edgington

On December 6, 2013, the VA sent Gonzales was sent written correspondence indicating, "This letter serves as your 3rd notice to comply with Federal Law to provide an **amended** [sic] accounting...for the period of 04/02/2012 – 04/27-2013. Your immediate action is required to avoid serious consequences." Consequences written included:

- Suspension benefits
- Removal of you as fiduciary
- Referral for misuse investigation

On May 14, 2014, the VA determined to, "Please suspend payments due to the fiduciary's failure to comply with VA regulations" and went on to state that a successor fiduciary would be appointed. VA records, dated May 15, 2014, concluded, "It appears that Mr. Gonzales is either unable or unwilling to provide approvable accountings...a mock accounting was created...which shows that there should be at least \$7,393 in the Veteran's custodial account based on the VA income and authorized expenses. The bank balance as of 6/3/2013 was \$17,298.60,"

A review of Edgington's Wells Fargo bank statements, account ending ****1509, showed that the recipient was receiving monthly VA benefits throughout 2013 and up to May 1, 2014, after which the bank statements no longer reflected VA benefits being deposited into that account, consistent with the VA's documentation that benefits would be suspended due to Gonzales' failure to address the issues or respond to the VA's requests.

Kathleen Tennis

Gonzales was appointed legal custodian on July 7, 2009. He was also court-appointed conservator on or about December 11, 2009, and he continues to serve in the capacity of court-appointed guardian and conservator for Tennis. In correspondence dated November 2, 2011, the VA informed Gonzales that the 9/1/09 - 11/31/10 accounting was denied for several reasons including that the listed expenses totaled \$60,177.17 and not \$66,177.00 as reflected on the accounting.

Gonzales's over reporting of expenses and failure to account for approximately \$6,000 entrusted to him has never been resolved. The VA made repeated requests for resolution. A letter from the VA to Gonzales, dated May 23, 2013, indicated that the 09/01/2009 – 10/31/2010 accounting was disapproved for a number of reasons including, "There is over a \$6,000.00 difference between the spending amounts from what you reported and what my audit came up with. I went over this several times and could not make up the difference. Please send us any additional information on your spending report that can help me bridge this large gap."

VA records, dated May 6, 2014, entitled Misuse Determination, stated, in part, that Gonzales "...has numerous seriously delinquent accountings. Attempts have been to obtain these accountings to no avail...Mr. Gonzales submitted a Superior Court of the State of Arizona...for the period 9/2009-10/31-2010. This accounting was approved by the court but disapproved by the VA. It was decided on 6/4/2013 that the VA accounting would be approved since it had already been approved by the court and the objection period had long since passed"

On March 17, 2016, Gonzales was asked what steps he took to rectify the more than \$6,000.00 accounting discrepancy. He was unable to articulate what affirmative steps taken he or anyone at his office took regarding this problem and he acknowledged that the greater than \$6,000.00 discrepancy in the Tennis accounting remained unexplained and unsolved to date.

Edgar Richcreek

Gonzales was appointed legal custodian by the VA, and was court-appointed guardian and conservator for Richcreek. Gonzales was removed, by the VA, as legal custodian in August 2014. He remained as court appointed guardian and conservator until Richcreek's death on April 11, 2015.

In August 2014, at the time that the VA removed Gonzales as the legal custodian, the VA directed him to remit all VA funds in his control to the successor legal custodian, McCollum. VA records showed as December 3, 2014, the VA contacted McCollum and learned that Gonzales did not remit the funds as required.

On February 22, 2016, McCollum verified, with the Division, that she did not receive any of Richcreek's VA money from Gonzales.

On or about April 16, 2014, the VA Gonzales correspondence regarding Richcreek and the accounting filed for 2011- 2013. The letter stated, “Your 11/16 Account [sic] is \$8000.00 off balance [sic] you made a huge error on the money spend side of the account...if you feel like you can’t do this Account [sic] please consider resigning from VA accounts.”

On April 26, 2014, indicate that the VA concluded that Gonzales failed to comply with federal regulations requiring the filing of complete accountings and that \$13,316.24 was unaccounted for.

On February 11, 2015, Gonzales filed a Notice of Filing, Report of Guardian. This report was not accounting, per say, and did not identify a specific reporting period although commentary was made for events that took place through 2014. In the Report of Guardian, Gonzales listed Richcreek’s assets including:

- Annuities
- Pensions
- VA benefits
- Social Security benefits
- Chase Bank checking account with a balance of \$2,000.00
- “Savings” of approximately \$50,500.00
- Wells Fargo checking account with a balance of \$40,000.00 also stating that the “VA Fiduciary is responsible for the funds.” Gonzales included a comment that he had been removed from the position of “VA Fiduciary due to not filing reports in a timely basis.” As stated earlier in this analysis, Gonzales was removed by the VA as legal custodian for Richcreek in August 2014 and, despite the VA directing him to remit the VA funds to successor legal custodian, McCollum, Gonzales did not remit those funds.

A review of the Chase Bank statements at no time had a balance of \$2,000.00. In January 2014, the account began with \$34,307.73, and ended in December 2014 at \$28,995.16. The lowest balance in 2014 was \$21,096.65 recorded for the period August 21, 2014 through September 19, 2014.

The Report of Guardian listed “Savings” of approximately \$50,500.00 and also a Wells Fargo checking with a balance of \$40,000.00, a total of \$90,500.00. However, a review of Richcreek’s accounts showed that the combined assets of these accounts totaled \$55,355.03 in January 2014, remained reasonably consistent throughout the year, and ended in December 2014 with a combined total of \$50,800.57.

Records showed that Gonzales was habitually late, by several years, in filing annual VA accountings and/or he failed to produce bank statements and ledgers for multiple cases.

Moreover, as noted earlier, VA Field Examiner, Hughes, told the Division that Gonzales had a “long history of me explaining those accountings to him.” She said she travelled to his office and trained him on how to do the accountings. She gave him a “simple, straight up example” of how to complete them but the VA did not see any improvement. She personally cautioned Gonzales approximately “30 times” and urged him to rectify the problems but he was unresponsive to the VA’s requests.

Although the Division used the above-referenced cases as examples, VA records showed that Gonzales was sent letters, regarding multiple veterans, in the VA’s efforts to obtain delinquent accountings or corrected accountings that were previously disapproved because of ongoing accounting errors.

Allegation 1 is substantiated.

Allegation 2: Gonzales failed to complete and file timely and/or accurate accountings

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

Administrative Order 2009-105, effective September 30, 2009:

§7-202(J)(4)(j):

j. The fiduciary shall prepare complete, accurate and understandable accountings and inventories.

Administrative Order 2012-064, effective September 1, 2012:

§7-202(J)(1)(a) and (c) (2):

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

c. The fiduciary shall:

(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;

Sarah Jones

Gonzales was court-appointed conservator for Jones on or about July 28, 2011. A review of court records showed that Gonzales filed the First through Third accounting in March

2015 and the conservator accountings for the 2014 – 2015 accounting period on August 13, 2015.

Gonzales acknowledged that Jones' accountings were not timely done and said he had "no good excuse" for the delay. Gonzales said he was well aware of the requirements to file accountings with the court but he simply did not do so until several years after his appointment.

A review of pleadings filed in court by the Cochise County Public Fiduciary's Office, by and through its attorney, on March 10, 2015, Gonzales submitted, to the court, the First Accounting for Jones, for the period 7/8/11 – 6/30/12 but said that the ending balances do not match the beginning balance used for the second accounting. The second accounting was also filed on March 10, 2015 and the ending balances do not match the beginning balances used for the third accounting. Gonzales filed the fourth accounting on August 13, 2015.

During an interview with Division staff on February 3, 2016, Gonzales stated that the day prior (February 2, 2016), he and his staff independently decided to "go back to square one" for the 2011 through 2012 accountings for Jones and apparently "stumbled upon the reason the damn reports wouldn't balance." He said because he had forgotten that he routed Jones' money through his personal fiduciary account for two or three months, his office became aware that those months were not accounted for. He said Jones received approximately \$4,500.00 in monthly benefits, the unaccounted for money was between \$9,000.00 to \$13,500.00 but that they discovered where the money went. He further claimed that no money was actually missing but there was a gap and they now had to review and itemize all of the expenses and likely have to order the recovered checks from the bank.

Gonzales filed the first inventory for Jones in March 2015, four years after he was appointed conservator for Jones. In that inventory he failed to include at least Jones' automobile and real property.

Jesus Sosa and Jorge Grijalva

Gonzales was appointed conservatorship for Jesus Sosa, and his brother, Jorge Grijalva, on or about October 10, 2011. He filed the first accounting on November 1, 2013. The accounts were restricted by the court.

In addition to late filings, Gonzales seemed unresponsive to the needs of the two boys. In correspondence, dated October 17, 2012, Gonzales wrote to attorney, Jana Flager ("Flager"), stating that the boys' mother (Mrs. Sosa) requested that he purchase laptop computers and printers for them and said that he would request money from the court for those and other fees and that he would be filing his annual accountings shortly. On October 1, 2013, Flager wrote a pointed letter to Gonzales stating that despite his October 17, 2012, letter, and multiple follow-up requests from Mrs. Sosa, the two boys were continuing to participate in a school year without necessary home computers. Flager went on to say that she learned Gonzales had not filed the annual accounting for 2012 and that

the accounting for 2013 was now past due and that there was "...no reason for the delay in the annual accounting."

Flager said that Mrs. Sosa asked her to assist with the boys' needs and with bringing the conservatorship accounting current. Flager demanded, in part, that Gonzales immediately comply with his duties as a conservator in filing all annual accountings, and submit to the court for funds to pay all outstanding debits and purchase "the much-needed computers." She further stated that if Gonzales had not filed the 2012 and 2013 accountings by October 13, 2013, Mrs. Sosa had asked Flager to seek Gonzales' removal as conservator and ask the court that fees incurred to do so be charged directly to Gonzales. He responded to Flager by saying she was right to question his actions over the past two years and that, despite his good intentions, he had not filed the annual accountings but would so by the end of the following week.

Naomi Zebrowski

According to court records, Gonzales was appointed guardian and conservator for Zebrowski on September 25, 2009. Records showed that Gonzales, by and through his attorney, filed the Petition for Order Approving Annual Accounting and Report, on November 16, 2010, in which Gonzales attached the Annual Report Guardian/Conservatorship of Naomi Zebrowski. In that Report, Gonzales stated in pertinent part:

The accompanying report covers the period of September 2009 through September 2010. The report is late due to my not remembering to file the report and my apologies to the court are extended.

Court records showed that on December 21, 2011, the court issued a Minute Entry stating:

IT IS ORDERED scheduling the matter for Non-appearance hearing Review Hearing on January 18, 2012....That an Annual Accounting covering the period from September 30, 2010 to September 25, 2011 shall be submitted to the Court not less than three (3) days prior to the hearing scheduled herein above.

On February 6, 2012, the Court issued a Minute Entry:

The Court having reviewed the above-entitled and numbered matter, and there having been no report or accounting file [sic] as order [sic] on December 21, 2011;

IT IS ORDERED scheduling the same for an In-Court Review Hearing on FRIDAY, FEBRUARY 17, 2012...

IT IS FURTHER ORDERED the Guardian/Conservator shall appear in person at the hearing scheduled herein above...

Correspondence, dated September 28, 2012, from Gonzales to Williams, documented that Gonzales was “late filing this report last year and did not file it until February 2012...as the filing year runs from October to September, and with the new rules in play, it does not give me sufficient time to collect the data, physician report and other information required by the new rules...”

The Court’s Minute Entry, dated May 15, 2013, stated, in pertinent part:

1. On November 8, 2012, the Honorable Ann R. Littrell ordered that the Conservator supplement an accounting, and provide the following information:
 - a) Statement as to whether the protected person was entitled to a property tax exemption pursuant to A.R.S. Section 42-, and if so, the amount of the exemption;
 - b) Explanation and itemization of the work done on the house by Leo Aguilar, including billing statements from Mr. Aguilar.
2. To date, the supplement has not been filed with the Court.

Based on the foregoing,

IT IS ORDERED that the supplemental be submitted to the Court no later than the close of business...on FRIDAY, May 13, 2013. In the event the supplement is not submitted on or before the prescribed date, an Order to Show Cause hearing will be set.

Gonzales submitted a Supplement to Accounting, undated, addressing the two points made by the Court. Regarding billings from Leo Aguilar for work performed on the ward’s residence, Gonzales stated that “the conservator was unable to locate the billings for Leo Aguilar” although Gonzales provided dates, costs, and some detail as to the work performed.

On June 11, 2013, the Court approved the accounting and set a review date for November 21, 2013. The Court further stated:

IT IS FURTHER ORDERED that the Conservator shall submit/file the annual report to the Court ten (10) days prior the review date.

On November 21, 2013, the Court issued a Minute Entry stating, pertinent part:

The Court having reviewed the file, the Court finds:

1. The annual report and accounting of the guardian/conservator, Mario A. Gonzales, was due on or before November 11, 2013.
2. To date, the annual report and accounting have not been submitted.

Based on the foregoing,

IT IS ORDERED setting this matter for a hearing on Friday, December 20, 2013...

IT IS FURTHER ORDERED, that the guardian/conservator shall appear in person at the hearing...

Allegation 2 is substantiated.

Allegation 3: Gonzales failed to properly inventory and pictorially record estate property.

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

§7-202(J)(5)(a) and (c):

5. Conservatorship.

The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

a. On appointment, the fiduciary shall review and be informed of the requirements specified in court rules and Arizona Statutes for managing a protected person's estate.

c. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

Administrative Order 200-105, effective September 30, 2009:

§7-202(J)(4)(a) and (b):

4. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise intelligence, prudence and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.

b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

Arizona Rules of Probate Procedure: Rule 30(A)(1) and (2):

A. Inventory.

1. Unless otherwise ordered by the court, the conservator shall file the inventory of the protected person's estate, as required by A.R.S. Section 14-5418(A), within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued. The inventory shall list all property owned by the protected person as of the date the conservator's letters of conservator, whether temporary or permanent, were first issued, and shall provide the values of such assets as of the date of the conservator's first appointment.

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why additional time is required and how much additional time is required to file the inventory.

Regarding valuations for inventoried assets, Gonzales said that in all conservator cases, to date, he has not provided valuations for estate assets, violation of §7-202(J)(5)(a) and (c) of the current Administrative Order, and, in violation of §7-202(J)(4)(a) and (b), of the previous Administrative Order 2009-105, effective September 30, 2009, as referenced above.

Despite Gonzales' statements that he did not, as a matter of practice, provide any valuations for estate assets when completing inventories, the Division found an exception in the Tennis matter where records showed that he did provide valuations for her inventoried items.

Allegation 3 is substantiated.

Allegation 4: Gonzales failed to adequately protect a protected person's assets.

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

§7-202(J)(5)(a) and (c):

5. Conservatorship.

The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

a. On appointment, the fiduciary shall review and be informed of the requirements specified in court rules and Arizona Statutes for managing a protected person's estate.

c. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

Administrative Order 200-105, effective September 30, 2009:

§7-202(J)(4)(a) and (b):

4. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise intelligence, prudence and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

a. On appointment, the fiduciary shall take steps to become informed of the statutory requirements for managing a protected person's estate.

b. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

Sarah Jones

Gonzales was well aware of Jones' inability to manage her money, as specified in his petition for appointment as conservator. Prior to the appointment as conservator, Gonzales was acting as Jones's agent under a Power of Attorney.

On or about May 19, 2011, he received a letter from Jones' parents, expressing their gratitude for Gonzales handling Jones' financial affairs and asking him to "please take necessary steps to have her declared financially incompetent."

On July 26, 2011, Gonzales petitioned the court for appointment as co-guardian (with Jones' parents) and conservator. In that petition, Gonzales relayed to the court that a

conservator or other protective order was necessary because Jones “is unable to manage said person’s estate and affairs effectively” due to a significant mental health conditions. Throughout Gonzales’ conservatorship appointment, he said he struggled with managing Jones’ finances in part because she continued to seek ways to open lines of credit and make purchases including buying a new vehicle in 2013 for which her parents gave Gonzales in excess of \$26,000.00 to discharge that loan.

In a document Gonzales provided the court in 2015, at the time when he first filed the conservator accounting, he stated, in part, that Jones was seeking and was granted credit despite a warning he placed in her credit bureau reports warning creditors that she was a ward and that no one should extend credit to without his permission. He further wrote that despite paying off the \$26,000.00 car loan Jones continued to increase her debit by \$9,000.00.

After providing a cashier’s check in the amount of \$22,987.74 to USAA Federal Savings Bank, Gonzales wrote USAA an accompany letter, dated August 7, 2013, indicating that he was the court appointed conservator and stated “...I further request that your firm does not extend further credit to Ms. Jones without my express approval.”

Records showed that Gonzales wrote a letter to Experian, dated March 21, 2014, indicating he was appointed conservator for Jones on June 14, 2012 and alerted Experian that “...No credit may be extended to her without the expressed permission of her conservator. Any creditor who issues credit after the date of this statement...without permission from the conservator may be at risk of not having the debt paid.” Similar letters, also dated March 21, 2014, were written to Transunion and Equifax. However, these letters were executed three years after Gonzales was appointed conservator.

Gonzales contacted TransUnion and requested a credit report for Jones on April 2, 2014. Page 13 of the credit report stated:

SARAH M JONES IS UNDER THE CONSERVATOR OF MARIO A. GONZALES. NO CREDIT MAY BE EXTENDED TO HER WITHOUT THE PERMISSION OF HER CONSERVATOR. ANY CREDITOR WHO ISSES CREDIT AFTER THE DATE OF THIS STATEMENT TO SARAH JONES WITHOUT PREMISSION FROM THE CONSERVATOR MAY BE AT RISK OF NOT HAVING THE DEBT.

Gonzales acknowledged that while Jones relocated from Arizona to Montana in 2013 for approximately 18 months, he did not go into her residence. Information provided by the Public Fiduciary’s office stated that the home was found to have a leaking roof, running toilet in a guest bathroom, calcium deposits on floors, one or more of the doors off hinge, and burned out light bulbs. As well, Gonzales failed to retrieve Jones’ house key for several months after he surrendered the key to contractors hired to repair the air conditioning system. Records indicated that he retrieved the house key in 2016.

On August 25, 2015, the court issued an order appointing the Cochise County Public Fiduciary temporary conservator for Jones and permanent conservator in October 2015.

The August 25, 2015, order reads, in pertinent part:

3. **SARAH M. JONES** currently has no guardian and her current conservator is Mario Gonzales, License No. 20030. Mr. Gonzales is being substituted by the court, an emergency exists and the welfare of **SARAH M. JONES** requires immediate attention.

On January 19, 2016, after a hearing on January 12, 2016, regarding Gonzales' Conservator's Petition for Approval of Final and Previous Accountings and Request for Fees, the court issued an order, based on the testimony given, and made the following findings, in pertinent part:

1. There is need for services to be rendered to the protected person.
2. There is clear evidence that the conservator breached his duty to the protected person.
3. That the annual reports were not filed appropriately and in a timely manner.
4. That the protected person's spending was not controlled by the prior conservator.
5. That the conservator lacked due diligence in following up.

The court denied Gonzales' petition and further ordered him to reimburse the Jones estate in the amount of \$11,547.61.

Allegation 4 is substantiated.

Allegation 5: Gonzales inappropriately "block billed"

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

Administrative Order 2012-63, effective September 1, 2012:

§3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids:

§3-303(B)(2)(a)(1):

B. Applicability. Pursuant to Rules 10.1 and 33, Arizona Rules of Probate Procedure and the administrative authority provided by Article VI, Section 3 of the Arizona Constitution, and A.R.S. §§ 14-1104 and 14-5109, the statewide fee guidelines and requirements for competitive bids adopted by this section apply to the reasonable

compensation and reimbursement for services rendered by Professionals in Title 14 proceedings. In this section the term professional applies to licensed and unlicensed court-appointed fiduciaries, guardians ad litem and attorneys.

2. *These fee guidelines:*

a. Apply to the compensation of the following individuals who are paid by an estate:

(1) Court-appointed fiduciaries, specifically guardians, conservators, and personal representatives, licensed and unlicensed;

§3-303(D)(2)(c):

2. *Compensation of the Professional. Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:*

c. "Block billing" is not permitted. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.

Gonzales stated that throughout his court appointments as conservator, he used block billing as a matter of his normal fiduciary practice. A review of ledgers showed that Gonzales varied in his fees for various client i.e. \$75.00, \$250.00, \$850.00, or \$900.00 as example. However, his files did not contain records of itemizing and detailing a breakdown of his fees for services rendered and time spent. The Division found a few records with some basic itemizing but none of the records reviewed revealed any detail on specific time spent on a given task.

Allegation 5 is substantiated.

Allegation 6: Gonzales commingled estate assets

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

Administrative Order 2009-105, effective September 30, 2009:

§7-202(J)(4)(c):

4. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise intelligence, prudence and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

c. The fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other clients' estates the fiduciary may hold as

conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets.

Administrative Order 2012-064, effective September 1, 2012:

§7-202(J)(5)(c) and (d):

5. Conservatorship.

The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

c. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person's estate as soon as possible. The fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

d. The fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other clients' estates the fiduciary may hold as conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets.

Gonzales acknowledged that he co-mingled Jones' funds by placing her monthly benefits into his fiduciary business account in 2011 and said he did so in an effort to protect her monetary interests. He said Jones had written down or memorized her checking routing and accounts numbers and proceeded to make purchases without his consent or knowledge. Gonzales said Jones' monthly benefits were deposited into her account but that he would redeposit the funds into his fiduciary business account then paid her bills. Gonzales denied that he co-mingled any monies from other clients.

At the Division's request, Gonzales submitted several years of his fiduciary business records. The Wells Fargo Simple Business Checking bank statements, account ****2548 for the period 2011 – 2015, and corresponding available ledgers showed that Gonzales, as well as using his fiduciary business account for his own business purposes, made financial deposits into his account for court-appointed clients Jones; Sosa; Grijalva; Tennis; and Limoges; and also for Eggink, as VA Legal Custodian; and Siegle, as Trustee.

Gonzales had fiduciary responsibilities for above named individuals, as follows:

- Jones – Guardian and Conservator
- Sosa - Conservator
- Grijalva – Conservator

- Tennis – Guardian and Conservator
- Limoges – Personal Representative
- Eggink – VA Legal Custodian
- Siegle – Trustee

Other names appeared in Gonzales' business account's ledgers but were not included in the list of clients Gonzales provided the Division, including cases closed within the past two years. Those names included, but were not limited, to Finlay, Willard, Fagen, Perry, and McGhee.

Examples of the deposits Gonzales co-mingled with his personal business account:

2011

- May 5, 2011 - \$1,500.00 - electronic wire transfer from Jones' parents
- June 7, 2011 - \$1,500.00 electronic wire (Jones' parents)
- June 124, 2011 - \$1,000.00 electronic wire (Jones' parents)
- June 22, 2011 - \$3,000.00 deposit:
 - \$1,000.00 - Jones (parents)
 - \$2,000.00 - Finlay
- June 27, 2011 - \$3,840.78 - Finlay "close acct"
- June 28, 2011 - \$8,000.00 - Finlay "sale of Mh"
- July 1, 2011 - \$2,000.00 - Mary Willard "retainer"
- July 6, 2011 - \$597.00 - Finlay "sale of flatware"
- July 12, 2011 - \$22.55 - Finlay "ins refund"
- July 26, 2011 - \$3,299.08 - Fagen
- August 8, 2011 - \$851.49 - McGhee
- August 9, 2011 - \$1,000.00 - McGhee
- August 11, 2011 - \$5,000.00 - Fagen
- September 21, 2011 - \$2,000.00 - Finlay "burial expense"
- September 27, 2011 - \$1,500.00 - McGhee "sale of car"
- September 29, 2011 - \$1,978.41 - Finlay "refund"
- November 8, 2011 - \$1,948.54 - Fagan - "reimb. See case notes"
- November 23, 2011 - \$100.00 - Jones

2012

- March 5, 2012 - \$1,1148.00 - Eggink - "SSA"
 - \$1,459.00 - Eggink - "VA"
- March 30, 2012 - \$2,800.00 - Jones "VA"
- April 6, 2012 - \$738.50 - Jones "medical refunds"
- April 30, 2012 - \$1,200.00 - Jones
 - \$2,800.00 - Jones "VA"

- June 4, 2012 - \$2,700.00 – Jones “VA”

2013

- April 16, 2013 - \$433.00 - Tennis
- September 25, 2013 - \$500.00 - Limoges
- November 22, 2013 - \$2,162.2 - Limoges – “Tumbleweed Auction”

2014

- February 20, 2014 - \$200.00 – Tennis “repay”
- September 8, 2014 - \$ 123.03 – Ann Regan (Power of Attorney client) – reimbursed for personal item
- September 11, 2014 - \$ 303.97 – Jasiewicz “reimb” for glasses
- December 12, 2014 - \$3,125.00 – Jesus Sosa “funds for Jesus”
- December 12 - \$13,125.00 – Jorge Grijalva “funds for Jorge”
- December 30, 2014 - \$10,350.00 - Sosa/Grijalva “readd sosa funds”

2015

- April 14, 2015 - \$3,000.00 – Sosa “advance” from SHARC
- August 14, 2015 - \$2,350.00 – Sosa “ ct appr”
- August 14, 2015 - \$4,645.75 – Grijalva “ct appr”
- October 7, 2015 - \$2,000.00 – Siegle

The Division also noted various deposits in the business account that were not specifically identified or were blank entries on the ledgers. Notable deposits were:

- February 26, 2013 - \$400.00
- September 27, 2013 - \$256.30
- November 25, 2013 - \$350.00
- January 6, 2014 - \$5,000.00
- January 23, 2014 - \$500.00

**** The Division notes there was no ledger or transaction log for January ****

- February 10, 2014 - \$2,000.00 – identified as “funds”
- August 25, 2015 - \$2,250.00

Gonzales admitted that he co-mingled Jones’ money but he denied doing so for any other client. Records revealed that Gonzales used his personal fiduciary business account for the purposes of conducting his business and he also used it for transactions related to his clients including making deposits of his clients’ benefits and monies into his own account.

It was beyond the scope of this investigation to determine whether any funds were misappropriated and a forensics audit may be required before any conclusion can be made.

Allegation 6 is substantiated.

Allegation 7: Gonzales failed to adequately maintain client records

ACJA §§ 7-201(F)(1) and 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained subsection (J), adopted pursuant to A.R. S. § 14-5651(A)(1).

§7-201(H)(6)(a), (g), (h), and (k)(6), (7), (8):

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:

a. Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

g. Exhibited gross negligence;

h. Exhibited incompetence in the performance of duties;

k. Exhibited incompetence in the performance of duties;

(6) Failed to practice competently by use of unsafe or unacceptable practices;

(7) Failed during the performance of any responsibility or duty of the profession or occupation to use the degree of care, skill and proficiency commonly exercised by the ordinary skillful, careful and prudent professional certificate holder engaged in similar practice under the same or similar conditions regardless of any level of harm or injury to the client or customer;

(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;

In the cases reviewed by the Division, it was apparent that Gonzales consistently did not retain legal records. Files were incomplete and were missing monthly ledgers/transaction logs showing financial transactions made, and some bank statements were missing. For example for veteran, Kathleen Tennis, Gonzales did not have in his control an entire year of bank statements for 2011. Files reviewed appeared to be disorganized and numerous pages were filed randomly and sometimes case information from one client was erroneously filed in another's records, although misfiling is common in office milieus.

More concerning was the lack of some transaction logs/legs and bank statements. In most cases, Gonzales maintained a large three ring binder for respective clients but relevant records were not centralized and were located, if available, in different filing cabinets or

on a computer. Some monthly ledger information was identified as missing for files the Division reviewed and both Gonzales and his assistant, Tiffany Cross, initially stated that the missing ledgers were unavailable because the office experienced a very recent crash in a computer's hard drive. Upon further inquiry, Gonzales later claimed that despite the hard drive crash he had made back-up copies on a thumb drive but that information came about only after additional inquiry into the unavailability of some of the records and it was not imparted to Division staff when the records were prepared for review.

In addition, as previously noted in this Investigation Summary, Court records regarding, Naomi Zebrowski, showed that the Court specifically requested billing information for a contractor that did work on Zebrowski's home. Gonzales replied to the Court that he was unable to find billing information from the contractor but instead offered the court dates, amount and some level of detail as to the work performed.

The opinion regarding the disorderly state of Gonzales's filing and record keeping system was echoed by VA Field Examiner, Bowen, when she conducted an onsite visit in February 2016, for the purposes of determine whether misuse occurred in several VA cases. She remarked that she was "appalled" at the level of disorganization and that despite Gonzales having five weeks' notice of her onsite visit and request to have eight files ready, she arrived to find the files were not prepared for her perusal.

Allegation 7 is substantiated.

Conclusion

The Division received this complaint from the Cochise County Public Fiduciary's office citing significant concerns for Gonzales' alleged misconduct as a professional fiduciary. Her office was directed, by the court, to intervene in the Jones case after the court received correspondence from the VA expressing concerns for Gonzales' non-compliance, and the VA's decision to remove him as legal custodian for all cases. After a review of the accounting, Elsouhag, said her office made recommendations to the court for a forensics audit of the Jones matter in order to try to determine the extent, if any, of financial wrongdoing by Gonzales. The Public Fiduciary's office objected to Gonzales' final accounting and is currently actively seeking compensation, from Gonzales' bond, per the court's order for Gonzales to reimburse the Jones estate \$11,547. 61.

On March 7, 2016, an Objection to Affidavits for Attorney's Fees and Costs was filed by the Public Fiduciary's attorney on grounds that the fees and costs incurred by the respective attorneys in the Jones matter should be paid by Gonzales and not by the estate because the fees and costs sought were incurred not in an attempt to benefit Jones but, rather, to defend Gonzales from claims that he failed to act in Jones' best interest; because Gonzales was found to have breached his fiduciary duty to Jones; because Gonzales failed to timely and accurately file his conservator accountings; fulfill his fiduciary duties as conservator; control the protected person's spending; follow up with creditors and credit bureaus; and, therefore, the fees and costs incurred by the guardian ad litem would not have been necessary.

On March 28, 2016, pursuant to the Jones matter, The Honorable Judge Charles. A. Irwin, issued a Minute Entry stating, in pertinent part:

1. The Objection is approved.
2. The Court hereby ORDERS the prior conservator, MR. MARIO GONZALES, to reimburse the estate of this conservatorship in the amount of \$1,558.00 for attorney fees and costs paid from the conservatorship's bank account...

IT IS ORDERED granting Judgment against Mario Gonzales to the Protected Person in the amount of \$1,500.00.

Cochise County Attorney (Civil Division), Brian M. McIntyre ("McIntyre"), sent correspondence, dated April 20, 2016, to American Contractor's Indemnity Company (Gonzales's bond). In that letter, McIntyre, representing the Cochise County Public Fiduciary's office, court appointed conservator for Jones, sent a demand for payment in the amount of \$13, 097.61, under a performance bond issued by American Contractor's Indemnity Company, on behalf of Gonzales. The letter went on to state that, based on facts presented and attached to that correspondence, Gonzales had failed to faithfully fulfill his obligations as prior conservator for Jones.

In her interview with the Division, VA Field Examiner, Hughes, indicated that she cautioned Gonzales at least 30 times and made efforts to train him on how to properly complete the accountings but said he remained unresponsive to the VA's requests. Despite Gonzales acquiring a new accounting software program and hiring an assistant, there was marginal improvement and by that point the VA decided to remove him from all VA appointed cases.

In her interview with the Division, VA Field Examiner, Bowen, stated that in her misuse investigation report, she recommended to the VA that in order to determine whether any malfeasance or misuse of money existed that a forensic audit be performed.

As previously noted in this analysis, on January 19, 2016, the Superior Court determined that Gonzales's breach of fiduciary duty caused harm to the Jones estate, ruled against Gonzales' petition, and awarded judgement in favor of the estate in the amount of \$11,547.61.

The Division cannot determine whether any affirmative action was taken by Gonzales regarding misappropriation of any estate monies. What is clear is that Gonzales' conservator accountings in the Jones matter, alone, were untimely and inaccurately completed and that Gonzales co-mingled Jones' benefits as well as co-mingled numerous other protected persons funds with his own fiduciary business account over several years.

The vast majority of VA accountings reviewed by the Division were disapproved by the VA because of ongoing errors made by Gonzales, and the VA, with little to no success,

continually, over years, attempted to have Gonzales file late accountings or correct rejected accountings.

In the Kathleen Tennis matter, Gonzales was the VA Legal Custodian but also the court-appointed Guardian of and Conservator for Kathleen Tennis. There was a significant accounting discrepancy in excess of \$6,000.00 in the 2009-2010 accounting period but this issue was never resolved and, presently, remains outstanding. The Division notes that the court had approved this accounting before it was submitted to the VA and was rejected by the VA because of inaccuracies found. The VA, despite ongoing efforts, was unable to get Gonzales to file a corrected accounting and simply abandoned its quest with the knowledge that the Superior Court had some oversight and had approved the accounting. Gonzales was unable to identify to the Division any actions he took in any good faith effort to remedy the incongruity with the accounting.

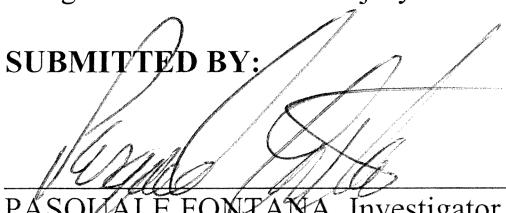
To reiterate, the Division cannot conclude whether there was any misappropriation of any estate monies. It was beyond the scope of this investigation to conduct a comprehensive forensic audit of accountings. This investigation did not include a formal and inclusive audit of all files and cases for which Gonzales is appointed conservator, past and present.

The findings in this investigation do not suggest simple and occasional computing errors in the accountings but, rather, illustrate what appears to be a substandard approach to fiduciary practice. Gonzales' accounting practice is unclear and concerning. Considering the totality of the information it seems that an enveloping, reckless and pervasive pattern of negligence, incompetence and unacceptable administration of professional responsibilities exists; and one that falls below a reasonable standard of care, skill and proficiency commonly used by skilled, careful and prudent professional fiduciaries.

Gonzales was removed as legal custodian for all of the VA cases for which he was appointed legal custodian for the VA. However, he continues to serve as court-appointed guardian and conservator in a number of cases in Arizona. Gonzales also continues to operate SHARC and serves as a representative payee and/or agent under powers of attorney documents for a number of people. The Division's investigation did not examine any of the cases for which SHARC is involved.


Pursuant to all of ACJA and regulations referenced earlier including §7-201(H)(6)(a),(g), (h), (j) and (k)(3)(6)(7)(8)(12); and §7-201(E)(2)(c)(2)(b)(iii), Gonzales' lack of diligence demonstrates ineptitude in the performance of professional obligations and can be recognized as a source of injury and loss to the public.

SUBMITTED BY:


PASQUALE FONTANA, Investigator
Certification and Licensing Division


Date

REVIEWED BY:

 4/27/16
Certification and Licensing Division Date


DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **15-0024/15-0025**, the Probable Cause Evaluator:

- ☐ requests division staff to investigate further.
- ☐ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

#s 1, 2, 3, 4, 5, 6, 9 7.

 4/29/16
Mike Baumstark Date
Probable Cause Evaluator

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Mario Gonzales
	Certification Number:	20030
	Business Name:	Sierra Huachuca Arc, Inc.
	Certificate Number:	20031

Recommendation:

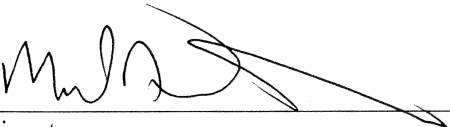
It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Mario Gonzales and Sierra Huachuca Arc, Inc. have committed the alleged act(s) of misconduct as detailed in Allegations 1, 2, 3, 4, 5, 6, and 7 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0024 and 15-0025.

It is recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA § 7-202(J)(1)(a) by failure to comply with federal law as further described in Allegation 1; ACJA §§ 7-202(J)(4)(j), 7-202(J)(1)(a) and (c)(2) by failure to complete and timely and/or accurately file accountings; Rule 30(A)(1) and (2) Rules of Probate Procedure, ACJA §§ 7-202(J)(5)(a) and (c), 7-202(J)(4)(a) and ((b) for failure to properly inventory and pictorially record estate property; ACJA §§ 7-202(J)(5)(a) and (c), 7-202(J)(4)(a) and ((b) for failure to properly protect wards' assets; ACJA §3-303(D)(2)(c) for inappropriately block billing; ACJA §§7-202(J)(4)(c) and 7-202(J)(5)(c) and (d) for commingling estate assets; and ACJA §7-201(H)(6)(a),(g), (h) and (k)(6),(7),(8) for failure to adequately maintain client records.

It is further recommended the Board find that the public health, safety or welfare is at risk, requires emergency action, and order the immediate emergency suspension of Mario Gonzales' and Sierra Huachuca Arc, Inc.'s certificates and set an expedited hearing.

It is further recommended that the Board revoke Mario Gonzales' and Sierra Huachuca Arc, Inc.'s certifications.

SUBMITTED BY:



Director
Certification and Licensing Division

5/4/16

Date

FINAL DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint numbers 15-0024 and 15-0025 and Mario Gonzales' and Sierra Huachuca Arc, Inc.'s,

certificate numbers 20030 and 20031 respectfully, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- ☐ requests division staff to investigate further.
- ☐ refers the complaint to another entity with jurisdiction.

Referral to: _____

- ☐ dismisses the complaint, and:
 - ☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
 - ☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- ☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
 - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
 - ☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- ☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- ☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- ☒ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

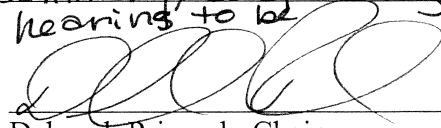
Date, Time, and Location: May 18, 2016 at 9:00 A.M.

- ☐ adopts the recommendations of the Division Director.
- ☐ does not adopt the recommendations of the Division Director and orders:

Board votes to summarily suspend license effective immediately, revoke licensure of individual & business and hold pending complaints in abeyance. It is therefore ordered summarily suspending license of individual & business hearings to be held 5/18/16 at 9am and

Orders Suspension

Staff is directed to notify license holder of location. PP


Deborah Primock, Chair
Fiduciary Board

5/12/16
Date

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**SUPREME COURT OF ARIZONA
FIDUCIARY BOARD**

**IN THE MATTER OF FIDUCIARY
LICENSE:**

No. FID-NFC-15-0024/15-0025

MARIO GONZALES,
Certificate Number 20030

And

SIERRA HUACHUCA ARC, INC.,
Certificate Number 20031.

**BOARD ACTION
WITHDRAWING,
WITHOUT PREDJUDICE,
NOTICE OF FORMAL
STATEMENT OF CHARGES
AS TO
SIERRA HUACHUCA ARC, INC.**

On May 12, 2016, the Board of Legal Document Preparers ("Board") voted to issue a Notice of Formal Statement of Charges and Right to Hearing in the above referenced matter revoking the licenses for Mario Gonzales ("Gonzales") and Sierra Huachuca ARC, Inc. ("SHARC"). In addition, the Board voted to summarily suspend both licenses.

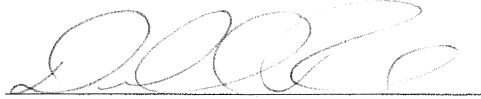
On May 23, 2016, Gonzales and SHARC stipulated that probable cause existed to support the summary suspension. On May 24, 2016, the Honorable William J. O'Neil issued the summary suspension. On June 16, 2016, Gonzales and SHARC filed a request for hearing as to the revocation.

On June 29, 2016, Gonzales withdrew his request for hearing and, therefore, his license is revoked. SHARC has continued to pursue its hearing request and the hearing is presently scheduled during August 2016.

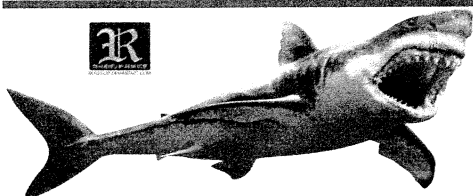
1 **BOARD ACTION**

2 Being informed of the relevant factors and by a vote of 6 to 0, the Board withdraws,
3 without prejudice, the Notice of Formal Statement of Charges as to SHARC only.
4

5 DATED this 20 day of July, 2016,

6 

7 Deborah Primock, Chair
8 Fiduciary Board
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Sierra Huachuca ARC
999 E. Fry Blvd Ste 219
Sierra Vista, AZ 85635

August 19, 2016

Ms. Debbie MacDougall
AZ Supreme Court AOC
1501 W. Washington Ste 104
Phoenix, AZ 85007

Re: Sierra Huachuca ARC, Inc.
License #20031

Dear Ms. MacDougall;

Please withdraw the renewal application for the above referenced License.

The board of directors has voted to withdraw the application and consider the current license expired.

The board of directors has found that we no longer require or want the fiduciary license.

Sincerely;

A handwritten signature in cursive script, appearing to read 'Sheri Gonzales', is written over the printed name.

Sheri Gonzales

Executive Director

Copy: Erin Brynes, Esq.

Telephone
Voice—520-458-4611
Fax—520-459-6260
Email: sharc10011@qwestoffice.net